

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Tolavius Timmons,

Case No.: 2:17-cv-00361-JAD-NJK

Plaintiff

V.

Bonnie Polley, et al.,

Defendants

Order Screening the Second-Amended Complaint

Plaintiff Tolavious Timmons brings this pro se civil-rights action under 42 U.S.C. § 1983 on events that he claims occurred while he was an inmate at the Clark County Detention Center (CCDC). I now screen his second-amended complaint, allowing some claims to proceed, dismissing others—some with leave to amend and others with prejudice.

Background

Timmons was a pretrial detainee at CCDC since at least June of 2016 until he was
transferred to High Desert State Prison (HDSP).¹ I previously screened his first-
led complaint, which included three counts.² In that screening order, I concluded that
ons could proceed with the following claims:

- The Count I free-exercise-of-religion claim against defendant Polley;³
 - The Count I conditions-of-confinement claim against defendants Polley, Aramark, the CCDC Dietician, Correctional Officer (CO) #J149450, CO Verduzco 7647, CO Estrada, Sergeant Cadet, and Sergeant Massucci;

¹ ECF No. 8 at 1; ECF No. 10.

2 ECF No. 6.

³ The complaint and therefore the docket incorrectly spell Polley's name as "Polly." I direct the Clerk of Court to correct the spelling on the docket.

- The Count II Equal Protection Clause claims against CO Lewis, CO #J149450, CO Estrada, and CO Verduzco 7647;
- The Count III free-exercise claims against defendants Polley, CO Verduzco 7647, and Sergeant 8593; and
- The Count III retaliation claims against defendants Polley, CO Verduzco 7647, and Sergeant 8593.⁴

Because Timmons has included substantially the same claims against these defendants in his second-amended complaint,⁵ these claims may proceed.

In his second-amended complaint, Timmons sues Chaplain Bonnie Polley, food-service provider Aramark, the Las Vegas Metropolitan Police Department (LVMPD), Captain Andrew Peralta, the Dietician and Food Services Director of CCDC, CO Estrada, CO J149450, CO Verduzco, Sergeant Cadet # 10102, Sergeant 8593, Sergeant Massucci, CO Lewis, Clark County, Sheriff Joe Lombardo, CO Smith, CO # 5577, FSD Peggy Martinez 2017, CO # 2899, and Lieutenant Taylor.⁶ Timmons adds new allegations in the second-amended complaint, and I now screen these new allegations.

Screening standard

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or an officer or employee of a governmental entity.⁷ In this screening, the court must identify any cognizable claims and dismiss any claims that are frivolous or malicious, or that fail to state a claim upon which relief may be granted or seek

⁴ ECF No. 6 at 14–15.

⁵ ECF No. 8.

⁶ *Id.* at 1–5.

⁷ See 28 U.S.C. § 1915A(a).

1 monetary relief from a defendant who is immune from such relief.⁸ All or part of the complaint
2 may be dismissed *sua sponte* if the prisoner's claims lack an arguable basis in law or fact. This
3 includes claims based on legal conclusions that are untenable, like claims against defendants who
4 are immune from suit or claims of infringement of a legal interest that clearly does not exist, as
5 well as claims based on fanciful factual allegations or fantastic or delusional scenarios.⁹

6 Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot
7 prove any set of facts in support of the claim that would entitle him to relief.¹⁰ In making this
8 determination, the court must take all allegations of material fact as true and construe them in the
9 light most favorable to the plaintiff.¹¹ Allegations of a pro se complainant are held to less
10 stringent standards than formal pleadings drafted by lawyers,¹² but a plaintiff must provide more
11 than mere labels and conclusions.¹³ "While legal conclusions can provide the framework of a
12 complaint, they must be supported with factual allegations."¹⁴ "Determining whether a
13 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
14 reviewing court to draw on its judicial experience and common sense."¹⁵

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18⁸ See *id.* § 1915A(b)(1)(2).

19⁹ See *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); see also *McKeever v. Block*, 932 F.2d
795, 798 (9th Cir. 1991).

20¹⁰ See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).

21¹¹ See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).

22¹² *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); see also *Balistrieri v. Pacifica Police Dep't*, 901 F.2d
696, 699 (9th Cir. 1990) (recognizing that pro se pleadings must be liberally construed).

23¹³ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

¹⁴ *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

¹⁵ *Id.*

Discussion

In his second-amended complaint, Timmons adds claims to Counts I and II for violations of the Americans with Disabilities Act (ADA) and for the right to petition the government.¹⁶ He also adds claims for violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to Counts I, II, and III.¹⁷ And Timmons has added additional defendants and allegations, including Counts IV, V, and VI. I now address these new allegations.¹⁸

7 | I. ADA claims

In Count I, Timmons alleges that, as a person with physical, social, mental, and emotional disabilities, he was treated differently through “discriminatory situational and social ethics and practice” by CCDC staff, agents, officers, and/or subcontractors.¹⁹ This appears to be a reference to his allegations that Muslim inmates did not receive the proper amount of food during Ramadan,²⁰ which he alleges violated his rights under the ADA.²¹ In Count II, Timmons alleges that some of the porters were taking food off the Halal food trays and eating it themselves and that this violated his rights under the ADA because the porters did so due to his social, physical, mental, and emotional disabilities.²²

¹⁹||¹⁶ ECF No. 8 at 6, 10.

²⁰||¹⁷ Id. at 6, 10, 13.

¹⁸ The facts discussed throughout this order are allegations taken from the Timmons's complaint and are not intended as findings of fact.

¹⁹ ECF No. 8 at 9.

20 Id.

23 | ²¹ *Id.* at 6.

²² *Id.* at 11–12.

1 The ADA applies in the prison context.²³ Under the statute, “no qualified individual with
2 a disability shall, by reason of such disability, be excluded from participation in or be denied the
3 benefits of the services, programs, or activities of a public entity, or be subjected to
4 discrimination by any such entity.”²⁴ The ADA defines an individual with a disability as
5 someone who has “a physical or mental impairment that substantially limits one or more of the
6 major life activities of such individual.”²⁵

7 To state a claim for disability discrimination under Title II of the ADA, a plaintiff must
8 allege four elements: (1) the plaintiff is an individual with a disability; (2) the plaintiff is
9 otherwise qualified to participate in or receive the benefit of some public entity’s services,
10 programs, or activities; (3) the plaintiff was either excluded from participation in or denied the
11 benefits of the public entity’s services, programs, or activities, or was otherwise discriminated
12 against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was
13 *because of* the plaintiff’s disability.²⁶

14 I find that Timmons has not stated any colorable ADA claims. Timmons makes the
15 vague and conclusory allegations that he has disabilities, but he does not allege facts sufficient to
16 show that he is disabled. More importantly, Timmons does not allege facts sufficient to show
17 that the allegedly improper conduct regarding food was *because of* his disabilities. Indeed, he
18 alleges that this conduct applied not just to him, but to other Muslim inmates as well. So, based
19 on Timmons’s own allegations, the allegedly improper conduct was not based on singling him
20 out because of a disability. His conclusory allegations that he was discriminated against based
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22 ²³ *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1063 (9th Cir. 2010).

23 ²⁴ 42 U.S.C. § 12132.

24 ²⁵ *Id.* § 12102(2)(A).

25 ²⁶ *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

1 on his purported disabilities do not save this claim. I therefore dismiss the ADA claims with
2 prejudice, as amendment would be futile.

3 **II. RLUIPA claims in Counts I, II, and III**

4 Counts I and II allege that defendant Polley refused to take action to enable Timmons to
5 obtain sufficient Halal food during Ramadan in 2016 and that Muslim inmates like Timmons
6 were therefore forced to choose between obtaining an adequate amount of food and observing
7 Ramadan, which is a major pillar of their faith.²⁷ He alleges that this conduct violated
8 RLUIPA.²⁸ Count III alleges that jail officials prevented Timmons from attending Muslim
9 Jumah services and denied him access to religious materials.²⁹

10 The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), which
11 governs religious exercise by institutionalized persons, provides in relevant part:

12 No government shall impose a substantial burden on the religious
13 exercise of a person residing in or confined to an institution . . .
14 unless the government demonstrates that imposition of the burden
15 on that person—(1) is in furtherance of a compelling governmental
compelling governmental interest.³⁰

16 A plaintiff has the initial burden of proving that the prison’s actions implicated his religious
17 exercise and that the prison’s actions substantially burdened that exercise of religion.³¹ Once the
18 plaintiff makes that *prima facie* showing, the burden shifts to the defendant to prove that its

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²⁷ ECF No. 8 at 6–9, 11.

22²⁸ *Id.* at 6, 10.

23²⁹ *Id.* at 13–21.

³⁰ 42 U.S.C. § 2000cc-1(a)(1)–(2).

³¹ *Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015).

1 actions are in furtherance of a compelling governmental interest and are the least restrictive
2 means of furthering that interest.³²

3 I find that Timmons has stated a colorable RLUIPA claim against defendant Polley by
4 alleging that her unwillingness to ensure that he received adequate food during Ramadan forced
5 him to choose between adequate nutrition and observing his faith. I also find that Timmons has
6 stated colorable RLUIPA claims against defendants Polley, CO Verduzco 7647, Sergeant 8593,
7 and CO Lewis based on the allegation that Timmons was not permitted to attend Jumah services
8 and receive certain religious materials. Therefore, Timmons's RLUIPA claims will proceed
9 against these defendants.

10 **III. Right to petition the government**

11 In Counts I and III, Timmons has added allegations that his right to petition the
12 government was violated.³³

13 **A. Count I**

14 Count I appears to be based on the allegation that Timmons was denied details of the
15 calorie and nutritional information for the food he was being served.³⁴ He alleges that this was
16 done to deny him evidence to petition the government for redress.³⁵ I interpret these allegations
17 as an access-to-the-courts claim. Prisoners have a constitutional right of access to the courts.³⁶
18 To establish a violation of this right, a prisoner must establish that he has suffered an actual
19 injury—a jurisdictional requirement that flows from the standing doctrine and may not be

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21³² *Id.* at 863.

22³³ ECF No. 8 at 6, 13.

23³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ See *Lewis v. Casey*, 518 U.S. 343, 346 (1996).

1 waived.³⁷ An “actual injury” is “actual prejudice with respect to contemplated or existing
2 litigation, such as the inability to meet a filing deadline or to present a claim.”³⁸

3 I find that Timmons has failed to state a colorable claim. He has not alleged facts
4 sufficient to show that he has suffered an actual injury. It is clear from the second-amended
5 complaint and my decision to permit the conditions-of-confinement claims to proceed that
6 Timmons has not been prevented from presenting a claim based on the alleged inadequacy of the
7 food. I therefore dismiss this claim with prejudice, as amendment would be futile.³⁹

8 **B. Count II**

9 I also find that Timmons fails to state a colorable claim in Count II for a violation of his
10 right to petition the government. Count II appears to be based on the allegations that Timmons’s
11 grievances were not handled properly.⁴⁰ There is no constitutional right to a particular
12 administrative-grievance process, and a plaintiff may not pursue a claim for denial of the right to
13 petition based on the failure of staff to respond to his grievances in a particular way or based on
14 the rejection of his grievances.⁴¹ I therefore dismiss this claim with prejudice, as amendment
15 would be futile.

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20³⁷ *Id.* at 349.

21³⁸ *Id.* at 348.

22³⁹ See *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) (stating
that leave to amend “is properly denied . . . if amendment would be futile”).

23⁴⁰ *Id.* at 11.

⁴¹ See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640
(9th Cir. 1988).

1 **IV. Religion claims against Captain Peralta in Count III**

2 The First Amendment to the United States Constitution prohibits Congress from making
3 any law respecting the establishment of religion or prohibiting its free exercise,⁴² and the U.S.
4 Supreme Court has held that inmates retain protections afforded by the First Amendment
5 “including its directive that no law shall prohibit the free exercise of religion.”⁴³ “In general, a
6 plaintiff will have stated a free exercise claim if: (1) ‘the claimant’s proffered belief [is] sincerely
7 held; and (2) ‘the claim [is] rooted in religious belief, not in purely secular philosophical
8 concerns.’”⁴⁴ Courts evaluate prison regulations alleged to infringe on constitutional rights
9 under a four-part “reasonableness” test, which asks “(1) whether there is a ‘rational connection’
10 between the regulation and a ‘legitimate and neutral’ government objective; (2) whether
11 ‘alternative means of exercising the right’ remain available to inmates; (3) ‘the impact
12 accommodation of the asserted constitutional right will have on guards and other inmates, and on
13 the allocation of prison resources;’ and (4) whether ‘the existence of obvious, easy alternatives’
14 to the regulation indicate that it ‘is an “exaggerated response” to prison concerns.’”⁴⁵

15 In my earlier screening order, I dismissed Timmons’s claims against Cpt. Peralta because
16 he had not adequately alleged that Peralta took part in any violations of his constitutional
17 rights.⁴⁶ I informed Timmons that, in order to state a colorable claim, he would need to include
18 factual allegations to support his claim and conclusory assertions would not be sufficient.⁴⁷

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⁴² U.S. Const. amend. I.

⁴³ *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).

⁴⁴ *Walker v. Beard*, 789 F.3d 1125, 1138 (9th Cir. 2015).

⁴⁵ *Crime Justice & Am., Inc. v. Honea*, 876 F.3d 966, 972 (9th Cir. 2017) (quoting *Turner v. Safley*, 482 U.S. 78, 89–90 (1987)).

⁴⁶ ECF No. 6 at 10–11.

⁴⁷ *Id.* at 2.

1 I find that Count III, as amended, states colorable free-exercise and RLUIPA claims
2 against Peralta by alleging that he signed refusals on two occasions that prevented Timmons
3 from having religious books.⁴⁸ Therefore, these two claims against Peralta in Count III will
4 proceed.

5 **V. Count IV: religion and conditions-of-confinement claims**

6 **A. Municipal and supervisor liability**

7 In my original screening order, I explained that, in order to state a § 1983 claim against a
8 municipality, like Clark County, a plaintiff must allege that there is a policy statement,
9 ordinance, regulation, or government custom that causes the plaintiff to suffer a constitutional
10 violation.⁴⁹ A municipality cannot be held liable under § 1983 on a respondeat superior theory,
11 so allegations that a municipality's employees violated a plaintiff's constitutional rights do not
12 state a colorable claim.⁵⁰ However, a municipality can be held liable for its officer's
13 constitutional violations if they are "directly attributable to the [municipality's] policy or
14 custom."⁵¹ To state such a claim, a plaintiff must go beyond bare assertions and plead facts
15 sufficient to show that there is a policy.⁵² I previously concluded that Timmons had not stated a
16 colorable claim because he merely asserted that Clark County has a policy of discriminating

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⁴⁸ *Id.* at 17.

22⁴⁹ ECF No. 6 at 11.

23⁵⁰ *Monell v. N.Y.C. Dep't of Soc. Servs*, 436 U.S. 658, 690–91 (1978).

⁵¹ *Fogel v. Collins*, 531 F.3d 824, 834 (9th Cir. 2008) (citing *Monell*, 436 U.S. at 691–94).

⁵² *Iqbal*, 556 U.S. at 680–81.

1 against Muslims.⁵³ I informed Timmons that he would have to allege true facts showing that
2 Clark County promulgated a rule, policy, or custom that caused the violation of his rights.⁵⁴

3 Count IV appears to be Timmons's response to my earlier screening order and an attempt
4 to extend his claims for condition-of-confinement, free-exercise, and RLUIPA violations alleged
5 in Counts I, II, and III to Clark County. In addition, Timmons is now attempting to extend these
6 claims to Sheriff Lombardo and the LVMPD, who were not named as defendants in the first-
7 amended complaint. The LVMPD is a political subdivision of the state and may sue or be sued
8 in its own name.⁵⁵ Thus, as with a municipality like Clark County, a plaintiff may state a
9 colorable claim against the LVMPD if he properly alleges facts that would be sufficient to show
10 municipal liability.

11 Timmons alleges the following in the second-amended complaint: he did not receive
12 adequate food during Ramadan 2016.⁵⁶ He would receive a quantity of food equal to only one
13 meal per day or even less. Sheriff Lombardo, Cpt. Peralta, the LVMPD, and Clark County
14 worked together to develop “the policy” that currently exists and are thus responsible for
15 Timmons’s hardships and the RLUIPA violations. The fact that inmates were underfed during
16 Ramadan was not a new situation and was the result of a conscious decision that “top officers”
17 and Aramark made after the issue was brought to their attention. These officers include Sheriff
18 Lombardo, Cpt. Peralta, and Lt. Zolman, who, along with Clark County and LVMPD, are

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⁵³ ECF No. 8 at 11–12.

22⁵⁴ *Id.*

23⁵⁵ Nev. Rev. Stat. § 280.280(4).

⁵⁶ ECF No. 8 at 7.

1 responsible for the continued “policy” in which Muslims are underfed, discriminated against, and
2 subjected to pain and suffering without any means to obtain redress.⁵⁷

3 In addition, Count IV alleges the following: Clark County, LVMPD, Sheriff Lombardo,
4 Cpt. Peralta, and Bonnie Polley have placed substantial burdens on Timmons’s ability to exercise
5 his religion freely.⁵⁸ As a Muslim, he has been stripped of his rights by the “policy” of these
6 defendants and their disregard for his rights.⁵⁹ Clark County has failed to adequately train or
7 enforce training that relates to the development and application of LVMPD policy, resulting in
8 Sheriff Lombardo failing to adequately train Cpt. Peralta. He in turn has failed to properly train
9 the lower-ranking lieutenants, affecting the training of sergeants, officers, and, employees under
10 the training standards defined in Chapter 289 of the Nevada Administrative Code (NAC).
11 Timmons claims that all of these failures resulted in the deprivation of his civil rights and all of
12 the officers listed as defendants violated their oaths of office and minimum training standards
13 under the NAC and Nevada Revised Statutes.

14 During Ramadan, Polley merely provided Muslim inmates with the same sack lunch
15 received by inmates returning late from court and newly booked inmates, which is not Halal.⁶⁰
16 Even though LVMPD staff had the means to prepare adequate meals for Ramadan, they chose
17 not to. However, people of other religions had adequate meals for their religious dietary
18 restrictions. Officers would deflect complaints back to Polley and state that anything relating to
19 “policy policing” had to be run up the chain of command to superior officers. Timmons also
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21 ⁵⁷ *Id.* at 8, 11.

22 ⁵⁸ *Id.* at 18.

23 ⁵⁹ *Id.*

⁶⁰ *Id.* at 19.

1 alleges that he was “systematically” excluded from Jumah services in retaliation for his
2 complaints.⁶¹

3 Timmons’s vague and conclusory allegations that some of the defendants worked
4 together to create a “policy” of underfeeding Muslims, discriminating against Muslims, and
5 subjecting them to pain and suffering without redress are insufficient to state a policy-based
6 claim. He has not alleged facts sufficient to show that there are such formal policies, much less
7 facts showing that the specified individuals created such a policy. And he also has not alleged
8 facts sufficient to show a *policy* of excluding Muslims from Jumah services.

9 However, I find that, liberally construed, the second-amended complaint adequately
10 alleges a *custom* by Clark County and LVMPD of failing to provide adequate nutrition for
11 Muslim inmates during Ramadan, forcing such inmates to choose between eating and complying
12 with their religious beliefs. According to the allegations, the practice of depriving Muslim
13 inmates of adequate was ongoing and caused Timmons to go hungry and affected his ability to
14 celebrate Ramadan in accordance with his religious beliefs. Therefore, the conditions-of-
15 confinement, free-exercise, and RLUIPA claims may proceed against Clark County, the
16 LVMPD, Sheriff Lombardo, and Captain Peralta based on their alleged custom of denying
17 Muslim inmates adequate amounts of Halal food during Ramadan.

18 To the extent that Timmons is attempting to assert a claim based on a failure-to-train
19 theory, he fails to state a colorable claim. Inadequate training may be the basis for a § 1983
20 claim only under limited circumstances.⁶² Merely alleging that the existing training program for
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23⁶¹ *Id.* at 21.

⁶² *City of Canton v. Harris*, 489 U.S. 378, 388–90 (1989).

1 a class of employees, such as police officers, is inadequate does not state a claim.⁶³ A plaintiff
2 must allege facts sufficient to show that the training program was inadequate in relation to the
3 tasks the particular officers must perform.⁶⁴ He also must allege facts sufficient to show that the
4 failure to train caused his constitutional injury; the mere fact that an employee makes a mistake
5 or fails to comply with his training or that the training may occasionally be negligently
6 administered is not sufficient to show causation.⁶⁵ In addition, to be liable for inadequate
7 training, a supervisor's or municipality's failure to train must reflect deliberate indifference to
8 people's constitutional rights.⁶⁶ To allege deliberate indifference, a plaintiff must allege facts
9 sufficient to show that the inadequacy of the training was the result of a deliberate and conscious
10 choice of the supervising defendant despite knowing of the inadequacy of the training and risk to
11 inmates.⁶⁷

12 Timmons pleads only the conclusory and vague allegation that there was a failure to
13 train. As I previously informed Timmons, in order to state a colorable claim, he must allege
14 facts, not conclusions.⁶⁸ He does not allege what training was inadequate in relation to particular
15 tasks, citing instead the entire NAC chapter that addresses police training. He does not allege
16 facts sufficient to show that any particular relevant training was inadequate or which defendants,
17 if any, were responsible for that inadequate training. In addition, he does not allege facts
18 sufficient to show that it was inadequate training that caused a particular constitutional violation.

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20 ⁶³ *Id.* at 389.

21 ⁶⁴ *Id.* at 390.

22 ⁶⁵ *Id.*

23 ⁶⁶ *Id.* at 391–92 (municipality deliberate indifference); *Canell v. Lightner*, 143 F.3d 1210, 1213–
14 (9th Cir. 1998) (supervisor deliberate indifference).

⁶⁷ *Canell*, 143 F.3d at 1213–14.

⁶⁸ ECF No. 6 at 2.

Rather, Timmons alleges that everyone knows that people need a minimum amount of food to survive and that there was no way that any of the defendants could be ignorant to the issues he brought to their attention regarding the inadequate amount of food.⁶⁹ Timmons also does not allege facts sufficient to show deliberate indifference by any of the defendants to any particular training inadequacy. Thus, Timmons fails to state a colorable failure-to-train claim against any of the defendants, including the municipal defendants. I therefore dismiss the failure to train claims without prejudice.

B. Claims against Lieutenant Taylor

Count IV also adds free-exercise and RLUIPA claims against Lt. Taylor. Timmons alleges that, after Cpt. Peralta signed off on the denial of his religious books, Timmons told Taylor about the denial of these materials and provided him with grievances.⁷⁰ Taylor took the grievances and told him that he would look into the denial of his books. Taylor merely held onto the grievances for a couple of days and then placed them on Timmons's desk while he was sleeping, without taking any corrective action.

A defendant is liable under § 1983 "only upon a showing of personal participation by the defendant."⁷¹ "A supervisor is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. There is no respondeat superior liability under [§]1983."⁷² I find that Timmons states colorable free-exercise and RLUIPA claims against Taylor, who allegedly knew that

⁶⁹ ECF No. 8 at 12.

⁷⁰ *Id.* at 20.

⁷¹ *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

⁷² *Id.*; see also *Iqbal*, 556 U.S. at 676 (holding that "[b]ecause vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution").

1 religious materials were being withheld from Timmons but refused to rectify the matter. These
2 claims will thus proceed against Lt. Taylor.

3 **VI. Count V**

4 Count V appears to be based on events that allegedly took place after Timmons filed the
5 first-amended complaint. Timmons alleges the following: During Ramadan 2017, he was
6 underfed for a second Ramadan by Aramark and LVMPD.⁷³ LVMPD officers replaced the
7 sandwiches in his sack lunch with two ham sandwiches, which violates Halal dietary restrictions.
8 Timmons tried to report this to higher officials but was impeded. He asked for someone to come
9 and inspect the meat in order to have a record of it, but nobody came to take photos or inspect
10 the meat.

11 Timmons submitted a number of grievances.⁷⁴ In early March 2017, he sent a kite saying
12 that he was not receiving Halal meal trays.⁷⁵ Kitchen officer #5577 responded to the kite by
13 telling Timmons to write to Bonnie Polley. Several days later, Timmons sent a request to Polley
14 stating that he needed to be placed back on the Halal diet and that he had not been able to eat
15 properly for the past several days because he was restricted from the commissary. Polley
16 responded that he was going to remain restricted from obtaining food from the commissary and
17 that he still was receiving Halal trays. But this was not true. Timmons then wrote a grievance to
18 Polley explaining again that he was not receiving a Halal tray and that this was his third kite
19 communicating that he was not being fed properly. Polley responded by writing “halal tray.”⁷⁶

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⁷³ ECF No. 8 at 25.

22⁷⁴ *Id.*

23⁷⁵ *Id.* at 26.

⁷⁶ *Id.* at 27.

1 It took six days to get the Halal tray through the grievance system, and Timmons had to scrounge
2 during that time to have some form of sustenance.

3 After complaining to officers, including officer # 5577, in mid-April 2017, Timmons
4 filed a grievance saying that it was not fair that, during Passover, he was not being provided with
5 the bread that usually came with the Halal tray.⁷⁷ The Halal/Kosher trays were being managed
6 by a Jewish rabbi. In observance of Passover, Jewish inmates were receiving unleavened bread
7 in the Kosher tray. To accomodate the holiday, Muslim inmates were also not served leaven
8 bread, but they did not receive unleaven bread either. Timmons was therefore not able to exercise
9 his own religious beliefs about his own diet.

10 In late May 2017, Timmons filed a grievance itemizing the food he had received on the
11 first three days of Ramadan and stating that it was well under a 2,000-calorie diet.⁷⁸ He
12 requested nutritional information for the food he was being given. Polley responded that she
13 would come see him, but she never did.⁷⁹ Sergeant 12899 also told him that his concerns were
14 being taken seriously. However, he was not provided the nutritional information and no
15 corrective action was taken. Instead, on the night that he submitted the grievance itemizing the
16 food he was receiving, he received ham sandwiches for his Ramadan meal. Timmons filed an
17 emergency grievance regarding these sandwiches with Lt. Taylor. The kite was signed by officer
18 # 8841. Timmons immediately showed the sandwiches to officer # 16047, who called down to
19 the kitchen and then claimed that he was told by the kitchen that the ham was actually a soy

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22⁷⁷ *Id.*

23⁷⁸ *Id.*

⁷⁹ *Id.* at 28.

1 product, even though kitchen personnel are not in the kitchen at that hour. No one ever came to
2 look at his sandwiches.

3 The next day, a sergeant told Timmons that the meat was turkey, but it was not turkey.⁸⁰
4 Timmons asked that a photo be taken of the meat to document it, and he placed the meat on each
5 page of his grievance so that he would have evidence to document his claim. However, both the
6 white and yellow copies of the grievance were returned to him.⁸¹ The LVMPD would not
7 document his claims the way they document other incidents in the facility.⁸² For instance, when
8 inmates are hurt by other inmates, LVMPD immediately takes photos and video to make a
9 record, but they would not make such a record for Timmons.⁸³ Peggy Martinez, the food-
10 services director (FSD), responded to Timmons by telling him that nobody was messing with his
11 food and that CCDC serves turkey, turkey bologna, and turkey salami but no form of ham.⁸⁴
12 Timmons attempted to escalate the matter above the sergeant level to a lieutenant but was
13 redirected to someone who would not look at the food he received, and the lieutenant was never
14 given the grievance, thus denying Timmons the right to petition for redress.

15 Timmons submitted another grievance at the end of May concerning the ham.⁸⁵ Officer
16 # 5577 replied that CCDC was a pork-free facility, but no one came to examine the meat at issue.
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20⁸⁰ *Id.*

21⁸¹ *Id.* at 28–29.

22⁸² *Id.* at 28.

23⁸³ *Id.* at 31.

⁸⁴ *Id.* at 29.

⁸⁵ *Id.*

1 In this grievance, Timmons explained that he had been retaliated against by not being fed.⁸⁶

2 After his complaints, he was not sent Ramadan food and was denied the daily trays.

3 In early-June 2017, Timmons submitted a grievance to Polley, explaining that he was
4 being intermittently fed and that no one was inspecting his food or fixing the situation.⁸⁷ In
5 particular, he explained that he was getting only one meal in the evening, not the double meal
6 required after fasting during the day. In addition, he said that he was being singled out and made
7 to follow rules that others do not have to follow; everyone else in the dorm was allowed to save
8 food, but the Muslim inmates were not. This grievance was given to Martinez, who told him that
9 he was receiving what had been approved by the facility.

10 I construe these allegations as claims for Eighth Amendment conditions of confinement,
11 First Amendment free exercise of religion, RLUIPA, Fourteenth Amendment equal protection,
12 First Amendment retaliation, and redress of grievances.

13 **A. Eighth Amendment conditions of confinement**

14 The “treatment a prisoner receives in prison and the conditions under which he is
15 confined are subject to scrutiny under the Eighth Amendment.”⁸⁸ Conditions of confinement
16 may, consistent with the Constitution, be restrictive and harsh.⁸⁹ However, prison officials have
17 a duty to ensure that prisoners are provided adequate food.⁹⁰ To challenge conditions of
18 confinement under the Eighth Amendment, a plaintiff must meet both an objective and

21 ⁸⁶ *Id.* at 30.

22 ⁸⁷ *Id.*

23 ⁸⁸ *Helling v. McKinney*, 509 U.S. 25, 31 (1993).

23 ⁸⁹ *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

23 ⁹⁰ *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000).

1 subjective test.⁹¹ The objective prong requires a showing that the deprivation was sufficiently
2 serious to form the basis for an Eighth Amendment violation.⁹²

3 As to the subjective prong, prisoners must establish prison officials' "deliberate
4 indifference" to the unconstitutional conditions of confinement.⁹³ To demonstrate that a prison
5 official was deliberately indifferent to a serious threat to the inmate's safety, the prisoner must
6 show that "the official [knew] of and disregard[ed] an excessive risk to inmate . . . safety; the
7 official must both be aware of facts from which the inference could be drawn that a substantial
8 risk of serious harm exists, and [the official] must also draw the inference."⁹⁴ Mere negligence is
9 insufficient to show a Eighth Amendment violation.⁹⁵

10 Liberally construing the second-amended complaint, I find that Timmons has stated a
11 colorable conditions-of-confinement claim against Polley, kitchen officer 5577, and Martinez.
12 According to the allegations, Timmons was served inadequate quantities of food and these
13 defendants knew of this problem and failed to correct it. Therefore, this claim will proceed
14 against them.

15 **B. RLUIPA and First Amendment free exercise**

16 I find that Timmons has stated colorable RLUIPA and free-exercise claims against
17 Polley, kitchen officer 5577, and Martinez. Timmons alleges that he was denied adequate Halal
18 food during Ramadan 2017. This is sufficient to state a colorable claim at the screening stage,
19 and this claim will therefore proceed against these defendants.

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21⁹¹ *Id.*

22⁹² *Id.* at 731.

23⁹³ *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

⁹⁴ *Id.* at 837.

⁹⁵ *Id.* at 835–36.

1 C. **Equal protection**

2 In order to state an equal-protection claim, a plaintiff must allege facts demonstrating that
3 defendants acted with the intent and purpose to discriminate against him based upon membership
4 in a protected class, or that defendants purposefully treated him differently than similarly situated
5 individuals without any rational basis for the disparate treatment.⁹⁶ The Equal Protection Clause
6 protects prisoners from intentional discrimination based on their religion.⁹⁷ Conclusory
7 allegations of motive are insufficient; specific factual allegations are required.⁹⁸

8 In *Village of Willowbrook v. Olech*, the Supreme Court addressed “whether the Equal
9 Protection Clause gives rise to a cause of action on behalf of a ‘class of one’ where the plaintiff
10 did not allege membership in a class or group.”⁹⁹ The Court ruled in the affirmative and
11 “recognized successful equal protection claims brought by a ‘class of one,’ where the plaintiff
12 alleges that she has been intentionally treated differently from others similarly situated and that
13 there is no rational basis for the difference in treatment.”¹⁰⁰ But the Court later clarified that the
14 class-of-one theory does not apply when state actions “by their nature involve discretionary
15 decisionmaking based on a vast array of subjective, individualized assessments.”¹⁰¹ “[A]llowing

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17 ⁹⁶ *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001); *see also Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

18 ⁹⁷ *Freeman v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997), abrogated on other grounds by *Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008).

19 ⁹⁸ *Jeffers v. Gomez*, 267 F.3d 895, 913–14 (9th Cir. 2001).

20 ⁹⁹ 528 U.S. at 564.

21 ¹⁰⁰ *Id.*; *see also Engquist v. Or. Dep’t of Agr.*, 553 U.S. 591, 601 (2008) (recognizing that an
22 equal-protection claim may be maintained in some circumstances even if the plaintiff does not
23 allege discrimination based on membership in a suspect class, but instead claims that she has
been irrationally singled out as class of one).

24 ¹⁰¹ *Engquist*, 553 U.S. at 603 (holding that the class-of-one theory does not apply in the public
employment context); *see also Towery v. Brewer*, 672 F.3d 650, 660–61 (9th Cir. 2012).

1 a challenge based on the arbitrary singling out of a particular person would undermine the very
2 discretion that such officials are entrusted to exercise.”¹⁰² And as the Court has recognized, the
3 problem with allowing class-of-one claims to go forward in a context where government officials
4 are necessarily making subjective, individualized decisions is that the government will be forced
5 to defend a multitude of such claims and courts will be obliged to go through them in search of
6 the rare “needle in a haystack.”¹⁰³

7 Where a class-of-one equal-protection claim is at issue, the plaintiff must identify the
8 group of individuals with whom he is similarly situated, identify the allegedly intentional and
9 disparate treatment, and allege that there was no rational basis for the different treatment.¹⁰⁴ I
10 find that Timmons states two colorable equal-protection claims due to alleged discrimination on
11 the basis of his religion. First, he alleges that Muslims did not have their religious dietary needs
12 accommodated during Ramadan 2017, while Jewish inmates did have their religious dietary
13 needs accommodated during Passover. Based on these allegations, this equal-protection claim
14 will proceed against Polley, kitchen officer 5577, officer 12889, and Martinez. Second,
15 Timmons states a colorable equal-protection claim by alleging that Muslim inmates were not
16 allowed to store their food, but non-Muslims were. This claim will proceed against Polley,
17 kitchen officer 5577, and Martinez.

18 Timmons also appears to be trying to state a class-of-one claim based on his allegations
19 that LVMPD officers failed to document his claims about the ham. But prisoners and non-

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¹⁰² *Engquist*, 553 U.S. at 604 (recognizing that a traffic officer does not violate the Equal
22 Protection Clause merely because the officer gives tickets to only some speeding drivers).

23¹⁰³ *Id.* at 608–09.

¹⁰⁴ *Gerhart v. Lake County*, 637 F.3d 1013, 1022 (9th Cir. 2011); *Chappell v. Bess*, No. 2:01-CV-01979 KJN P, 2012 WL 3276984, at *19–21 (E.D. Cal. Aug. 9, 2012).

1 prisoners are not similarly situated,¹⁰⁵ and the decision whether to visually document misconduct
2 claims by inmates appears to be a discretionary, subjective, and individualized decision, which
3 would not be subject to a class-of-one analysis. Thus, Timmons cannot state a colorable class-
4 of-one equal-protection claim, and I dismiss this claim with prejudice, as amendment would be
5 futile.

6 **D. First Amendment retaliation**

7 To state a viable First Amendment retaliation claim in the prison context, a plaintiff must
8 allege facts sufficient to show: “(1) a state actor took some adverse action against an inmate
9 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
10 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
11 legitimate correctional goal.”¹⁰⁶ Total chilling is not required; it is enough if an official’s acts
12 would chill or silence a person of ordinary firmness from future First Amendment activities.¹⁰⁷

13 I find that Timmons has stated a colorable retaliation claim against Polley, kitchen officer
14 5577, officer 12889, and Martinez. Liberally construed, the second-amended complaint alleges
15 that Timmons was served pork because he complained and filed a grievance regarding the caloric
16 content of his food. And because Timmons complained further, he was denied the Halal daily
17 trays. Therefore, the retaliation claims will proceed against these defendants.

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¹⁰⁵ *Parks v. Chappell*, No. C-13-4048 EMC (PR), 2014 WL 2811114, at *2 (N.D. Cal. June 20,
22 2014); *Levingston v. Plummer*, No. C 94-4020 VRW, 1995 WL 23945, at *1 (N.D. Cal. Jan. 9,
23 1995).

¹⁰⁶ *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2004).

¹⁰⁷ *Id.* at 568–69.

1 **E. Redress of grievances**

2 Timmons's redress-of-grievances claim appears to be based on his frustration with the
3 process for addressing his grievances and being unable to escalate his grievances to higher
4 levels. As discussed above, prisoners do not have a constitutional right to a particular grievance
5 process. I therefore dismiss this claim with prejudice, as amendment would be futile.

6 **VII. Count VI**

7 Count VI alleges the following: LVMPD, Sheriff Lombardo, Cpt. Peralta, Clark County,
8 and its officers and/or agents, employees, and sub-contractors have failed to properly ensure that
9 their staff are properly trained in or are applying their training regarding the civil and human
10 rights of detainees.¹⁰⁸ Timmons claims that LVMPD underfed him during Ramadan 2017 by
11 feeding him regular sack lunches that were not Kosher or Halal. Sometimes, he was not fed at
12 all.¹⁰⁹ In addition, Timmons claims LVMPD will not permit Timmons to participate in Islamic
13 services. It also hindered from obtaining literature that differed from the religious ideology the
14 jail provides. And LVMPD sought ways to deny Timmons from benefitting from programs like
15 other inmates. Further, the policy that is currently in place does not permit a person to petition
16 for government redress because any low-level officer can prevent an inmate from escalating a
17 problem and then retaliate against the inmate.

18 Timmons also alleges that LVMPD discriminates against Muslims by design.¹¹⁰ For
19 example, for Muslim inmates to have an Islam 101 class in the South Tower of CCDC, a unit
20 must have five requesting inmates. The same is true for Muslim Jumah services. However, for
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22 ¹⁰⁸ ECF No. 8 at 32.

23 ¹⁰⁹ *Id.*

24 ¹¹⁰ *Id.* at 33.

1 Buddhists and Bible study, the number of requests from all units is considered, not just the
2 number of request from one unit. Similarly, for other classes, such as G.E.D. classes, individuals
3 from multiple floors are gathered to participate in classes, but the same will not be done for Islam
4 101 classes.

5 In the North Tower, all Muslims from multiple floors are gathered to participate in
6 Jumah, but this right was not afforded to South Tower inmates.¹¹¹ LVMPD has the ability to
7 move South Tower Muslims over to the North Tower for Jumah service. LVMPD has not
8 permitted Timmons to participate in Islamic services and has made no attempt to fix or correct
9 the issues. He alleges that the defendants encourage the abuse of inmates' rights and approve of
10 oppressive tactics. Timmons states that they are guilty by association and because they have
11 been made aware of these same issues in the past by other inmates and acquiesce to them
12 continuing.¹¹² These same issues were presented to LVMPD officers and employees in 2016 as
13 well.¹¹³

14 I construe these allegations as claims for Eighth Amendment conditions of confinement,
15 First Amendment free exercise, RLUIPA, Fourteenth Amendment equal protection, and redress
16 of grievances. I first address these claims in a context of whether Timmons has alleged
17 sufficient facts to show that these violations resulted from policies, customs, or a failure to train.

18 **A. Policies and customs**

19 As to Timmons's allegations that he was underfed during Ramadan 2017, I find that he
20 has stated colorable conditions-of-confinement, free-exercise, and RLUIPA claims against Clark
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22 ¹¹¹ *Id.* at 34.

23 ¹¹² *Id.*

¹¹³ *Id.*

1 County, LVMD, Cpt. Peralta, and Sheriff Lombardo for the same reasons that I found these
2 claims colorable in Count IV for comparable allegations stemming from Ramadan 2016.
3 Liberally construed, the second-amended complaint adequately alleges a custom of failing to
4 provide adequate Halal nutrition to Muslim inmates during Ramadan, causing a violation of
5 Timmons's rights during Ramadan 2017.

6 I also find that Timmons states colorable equal-protection claims against Clark County
7 and LVMPD. He alleges facts sufficient to show that there is a policy of treating Muslim
8 inmates differently than inmates of other religions when deciding whether there is a sufficient
9 number of inmates to have a class. In addition, he alleges facts sufficient to show that there is a
10 policy wherein Muslim inmates in CCDC's South Tower are treated differently than similarly
11 situated Muslim inmates in the North Tower by not being permitted to attend Islamic Services.
12 Timmons's equal-protection claim will therefore proceed against Clark County and the LVMPD.

13 However, Timmons has not gone beyond conclusory allegations to show any other
14 unconstitutional policies existed. He has not adequately alleged facts to show a *policy* of
15 preventing inmates from obtaining religious literature. Merely making the vague allegation that
16 the LVMPD hindered Timmons from obtaining religious literature is not sufficient to allege facts
17 showing a policy of denying Muslim inmates religious literature. And as to Timmons's
18 allegations concerning grievances, as I explained above, there is no constitutional right to a
19 particular grievance process. He has also failed to allege facts sufficient to show a policy of
20 retaliation. And vague, conclusory allegations that defendants were responsible for the abuse of
21 inmate rights, oppressive tactics, and targeting Timmons for being Muslim are not sufficient to
22 state a colorable claim. Because I previously informed Timmons that he needed to allege facts to
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1 support his claims and told him what was required to plead municipal liability, I dismiss these
2 portions of Count VI with prejudice.

3 **B. Failure to train**

4 Timmons's conclusory allegations that LVMPD and Clark County have failed to properly
5 ensure that their staff are properly trained regarding the civil and human rights of detainees are
6 insufficient to state a colorable claim. Timmons does not allege what training was inadequate in
7 relation to particular tasks. He does not allege facts sufficient to show that any particular
8 relevant training was inadequate or who was responsible for that inadequate training. And he
9 does not allege facts sufficient to show that it was inadequate training that caused any particular
10 violation. Instead, Timmons seems to suggest that it was officers' failure to follow their training
11 rather than a failure to train that may have led to constitutional violations. Timmons also does
12 not allege facts sufficient to show deliberate indifference by any of the defendants to any
13 particular training inadequacy. Thus, he fails to state a colorable failure-to-train claim against
14 any of the defendants, including the municipal defendants. I therefore dismiss the failure-to-train
15 claims without prejudice.

16 **VIII. Change of address**

17 Timmons recently filed notice that he would be transferring from CCDC to a state
18 prison,¹¹⁴ and according to the Nevada Department of Corrections website, he is currently
19 housed at HDSP. I therefore direct the Clerk of Court to send this order and the 18 USM-285
20 forms to Timmons at HDSP. I also order Timmons to file notice with the court within 30 days of
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¹¹⁴ ECF No. 10.

1 this order confirming that his address has changed to HDSP. Failure to do so may lead to
2 dismissal of this action.¹¹⁵

Conclusion

Accordingly, IT IS HEREBY ORDERED that:

- The following claims **MAY PROCEED**:
 - The Count I First Amendment free-exercise-of-religion claim against Polley;
 - The Count I conditions-of-confinement claim against Polley, Aramark, CCDC dietician, CO #J149450, CO Verduzco 7647, CO Estrada, Sgt. Cadet, and Sgt. Massucci;
 - The Count II equal-protection claims against CO Lewis, CO #J149450, CO Estrada, and CO Verduzco 7647;
 - The Count III free-exercise claims against Polley, CO Verduzco 7647, and Sgt. 8593;
 - The Count III retaliation claims against Polley, CO Verduzco 7647, and Sgt. 8593;
 - The Count I and Count II RLUIPA claims against Polley;
 - The Count III RLUIPA claim against Polley, CO Verduzco 7647, Sgt. 8593, and CO Lewis;
 - The Count III free-exercise and RLUIPA claims against Cpt. Peralta;

¹¹⁵ Local Rule of Practice IA 3-1 (“An attorney or pro se party must immediately file with the court written notification of any change of mailing address, email address, telephone number, or facsimile number. The notification must include proof of service on each opposing party or the party’s attorney. Failure to comply with this rule may result in the dismissal of the action, entry of default judgment, or other sanctions as deemed appropriate by the court.”).

- The Count IV conditions-of-confinement claim, free-exercise claim, and RLUIPA claims against Clark County, the LVMPD, Sheriff Lombardo, and Cpt. Peralta (based on the alleged custom of denying Muslim inmates adequate food during Ramadan 2016);
- The Count IV RLUIPA and free-exercise of religion claims against Lt. Taylor;
- The Count V conditions-of-confinement, RLUIPA, free-exercise, retaliation, and equal-protection (based on alleged discrimination against Muslims regarding dietary accommodations and food storage) claims, against Polley, kitchen officer 5577, and Martinez;
- The Count VI conditions-of-confinement claim, RLUIPA, and free-exercise claims against Clark County, LVMPD, Cpt. Peralta, and Sheriff Lombardo (based on the alleged custom of not serving adequate quantities of Halal food during Ramadan 2017); and
- The Count VI equal-protection claims against Clark County and LVMPD.

- The following claims are **DISMISSED with prejudice and without leave to amend:**

- The Count IV ADA and right-to-petition-the-government claims;
- The Count IV policy claims;
- The Count V class-of-one equal-protection claims;
- The Count V redress-of-grievances claim; and
- The Count VI claims based on vague allegations concerning policies about religious literature, grievances, and vague oppressive,

1 discriminatory, and abusive practices;

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- 3 • The failure to train claims in Count IV and VI **are DISMISSED without**
prejudice.

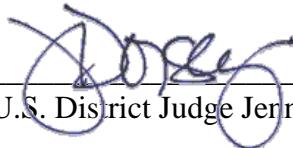
4 IT IS FURTHER ORDERED that any defendant not mentioned in this conclusion is
5 dismissed from the action.

6 IT IS FURTHER ORDERED that the Clerk of Court **is directed to issue summonses** for
7 Defendants Bonnie Polley, Aramark, Dietician of CCDC, CO Owens #J149450, CO Verduzco
8 7647, CO Estrada, Sgt. Cadet, Sgt. Massucci, CO Lewis, CO #J149450, Sgt. 8593; LVMPD,
9 Sheriff Joe Lombardo, Cpt. Andrew Peralta, Lt. Taylor; kitchen officer 5577, Peggy Martinez,
10 and Clark County, **AND DELIVER THE SAME**, to the U.S. Marshal for service. The Clerk **is**
11 **also directed to send** to plaintiff 18 USM-285 forms and a copy of this order **at High Desert**
12 **State Prison, addressed to Tolavius Timmons, 1209840.** The Clerk is **further directed to**
13 **send** a copy of **the second-amended complaint [ECF No. 8]** and a copy of this order to the
14 U.S. Marshal for service on defendants. Plaintiff will then have **30 days** to furnish to the U.S.
15 Marshal the required USM-285 forms with relevant information for each defendant on each
16 form. Within **20 days** after receiving from the U.S. Marshal a copy of the USM-285 forms
17 showing whether service has been accomplished, plaintiff must file a notice with the Court
18 identifying which defendants were served and which were not served, if any. If plaintiff wishes
19 to have service again attempted on an unserved defendants, then a motion must be filed with the
20 Court identifying the unserved defendants and specifying a more detailed name and/or address
21 for said defendants, or whether some other manner of service should be attempted. The Clerk is
22 **further directed to change** the name “Bonnie Polly” on the docket to “Bonnie Polley” and to
23 issue the summons with the corrected spelling.

1 **IT IS FURTHER ORDERED** that plaintiff shall provide notice to the court of his
2 change of address within 30 days of this order. Failure to do so may lead to dismissal of this
3 action.

4 **IT IS FURTHER ORDERED** that plaintiff must serve upon defendants or, if
5 appearance has been entered by counsel, upon the attorneys, a copy of every pleading, motion or
6 other document submitted for consideration by the Court. Plaintiff must include with the
7 original paper submitted for filing a certificate stating the date that a true and correct copy of the
8 document was mailed to the defendants or counsel for the defendants. The Court may disregard
9 any paper received by a district judge or magistrate judge that has not been filed with the clerk,
10 and any paper received by a district judge, magistrate judge, or the clerk that fails to include a
11 certificate of service.

12 Dated: January 29, 2019

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14 U.S. District Judge Jennifer A. Dorsey

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